

NO. :

Mansfield OH 44905

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Questions Presented for Review under Rule 14.1 (a)

Is the holding of the 6th Circuit court of appeals in King v. Zamara, 733 F. 3d 207 (6th Cir. 2015), cert. den., Zamara v. King, 2016 U.S. LEXIS 189 (2016), that "deprivation of First Amendment rights are themselves injuries apart from any mental, emotional or physical injuries that might also arise from the deprivation," to be applied to prisoner civil rights lawsuits taken pursuant to 42 U.S.C. § 1983 on a constitutional claim of retaliation of a prison official for protected conduct?

List of All Parties to the Proceeding

Plaintiff

Michael Williamson

Defendants

O.D.R.C. Ri.C.I. C.O. Karen Slusher  
O.D.R.C. Ri.C.I. ADA DO, HCA Trinity Floyd  
O.D.R.C. Ri.C.I. AWSS Timothy Milligan  
O.D.R.C. Ri.C.I. CMO Alfred Granson  
O.D.R.C. Ri.C.I. II Kelly Rose  
O.D.R.C. Ri.C.I. ADA ADO, AHCA Shela Jordan  
O.D.R.C. Ri.C.I. Warden Maggie Bradshaw  
O.D.R.C. Ri.C.I. Lt. - \_\_\_\_\_ Spears  
O.D.R.C. Ri.C.I. SRT C.O. John Doe<sup>1</sup>  
O.D.R.C. Ri.C.I. SRT Electrician/Firearms Instructor Christo Montgomery

Counsel of Record for all defendants below was: OPAAC Mindy Worly, 150 E. Gay St., 16th Floor, Columbus OH 43215

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IN THE SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

[Corrected per Clerk's correspondence dated 1.17.2019]

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[Citations of the official and unofficial reports of opinions and orders entered in the case]

For cases from federal courts:

The opinion of the United States 6<sup>th</sup> Circuit Court of Appeals appears at Appendix 1 to the petition and is reported at 2018 U.S. LEXIS 30693.

The opinion of the United States District Court for the Northern district of Ohio appears at Appendix 2 to the petition and is reported at 2017 U.S. Dist. LEXIS 217940.

JURISDICTION

For cases from federal courts:

The date on which the United States 6<sup>th</sup> Circuit Court of Appeals decided my case was 10.29.2018. No petition for rehearing was filed in my case. This is a corrected petition per correspondence of the United States Supreme Court clerk of court dated 1.17.2019.

The issue in this petition arises under the First Amendment to the Constitution of the United States and also involves an interpretation of a federal statute, 42 U.S.C. § 19970 e (e). The United States 6<sup>th</sup> Circuit court of appeals has entered a decision, supra, in conflict with the decision of another United States court of appeals on the same important matter; and/or has entered a decision, supra, on an important question of federal law that has not been, but should be, settled by this Court, as argued infra, this brief, pp. 3-7.

Constitutional Provisions (and Statutes, if any) Substantively Involved In the Case

1st Amendment to the United States Constitution (in pertinent part):

"Congress shall make no law ... abridging the freedom of speech, ... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

42 U.S.C. § 1997 e (e):

"(e) Limitation on recovery. No Federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury."

Pertinent Statement of the Case

Petitioner Michael Williamson timely filed a verified prisoners' civil rights complaint in the U.C. district court in Williamson v. Slusher, 1:17-CV-106 (N.D. Ohio, filed 1.13.2017) taken pursuant to 42 U.S.C. § 1983 against certain staff prison officials of the Ohio ~~Department of Rehabilitation and Corrections~~ Department of Rehabilitation and Corrections ("O.D.R.C.") Richland Correctional Institute ("Ri.C.I."). In the complaint he alleged retaliation (as a First Amendment violation) against him by two prison officials, Chief medical officer Trinity Floyd, and assistant chief medical officer Shelia Jordan, for his filing prison grievances related to his claims of not receiving adequate medical care (for a diagnosed mobility impairment); for his attempting to obtain

adequate medical care for that impairment; because he was perceived by those defendants as a "high filer" of Thaddeus-X type lawsuit; and for his orally referencing suing defendant Jordan for denial of his civil rights. (Complaint, Doc. 1, 1:17-CV-106 id., at originally numbered pp 2, 26-30 (a); plaintiff's claims also described in 6th Circuit opinion, slip opinion attached as Appa, 1, pp. 4-5). Williamson also alleged adverse actions taken against him by these two defendants on the retaliation claims ~~including~~ <sup>including</sup> denial of him being able to research or prepare Thaddeus-X type lawsuits in the Ri.C.I. library/~~law~~ library (Complaint, Doc. 1, id., originally numbered pp. 31-36).

The complaint was dismissed by grant of the district court of defendant's motion to dismiss for failure to state a claim. Williamson timely appealed that dismissal to the 6th Circuit court of appeals, where the 6th Circuit affirmed the district court's dismissal on 10.29.2018. Williamson timely filed this petition.

Williamson requests this writ be issued on that section of the 6th Circuit's (slip opinion, App. 1, at pp. 4-5) holding, dispositively to its dismissal, that he needed to show actual physical harm for the violations referenced above in this statement of the case.

#### Summary of Argument

The decision of the United States Circuit Court of Appeals in Williamson v. Slusher, (6th Circuit, 2018) incorrectly decided that, in a 42 U.S.C. § 1983 case asserting retaliation against prison officials, a First Amendment violation claim, actual physical injury was required to have been suffered by a plaintiff in order to state a claim. That holding was negatively dispositive ~~to the denial of~~ <sup>the above cited</sup> ~~claims~~ to the denial of ~~claims~~ made by the Petitioner in his verified complaint.

A correct decision on the same subject, instead, would have been, that deprivation of First Amendment rights (alleged in prisoners' civil rights lawsuit) are themselves injuries ~~not~~ ~~separate~~ ~~apart~~ ~~from~~ ~~any~~ ~~other~~ ~~recognizable~~ ~~injury~~ ~~that~~ ~~might~~ ~~also~~ ~~arise~~ ~~from~~ ~~the~~ ~~depriva-~~ ~~tion~~. See, infra, this, brief, p. 6.

#### Argument (Reasons for Granting the Petition)

Williamson brings one issue before this Court on the 6th Circuit's affirmation of the district

court's grant of the defendants' motion to dismiss for failure to state a cause of action, that being, substantively, whether, as the 6th Circuit would have it, at p. 5 of the slip opinion attached, that a First Amendment retaliation claim made pursuant to 42 U.S.C. § 1983 requires "actual harm" of a physical nature to the plaintiff in order to state a claim.

The circuit courts suffer mightily on this holding at law from contrary holdings, including those of the 6th Circuit court of appeals, as to First Amendment violation claims where ~~retaliation~~ retaliation of a government actor against a plaintiff is not in issue, and the time is ripe for this Court to make a ruling on this subject to preclude growingly disparate outcomes in different circuits of such claims based upon differing interpretations of the importance and meaning of the First Amendment in the context of any constitutional tort claim based upon a claim of government actor retaliation in general, or, as that term is used in § 1983 suits, see Thaddeus-X v. Blatter, 175 F. 3d 378, 394 (6th Cir. 1999),<sup>1</sup> a claim of retaliation by a person operating under color of state law against a prisoner.

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1. Retaliation of government actors for protected conduct is a First Amendment violation claim. Thaddeus-X v. Blatter, 175 F. 3d 378~~8~~ (6th Cir.). Filing prison grievances is protected conduct. Oody v. Slusher, 2018 WL 3587003 (6th Cir. 2018).

Applying for and obtaining adequate medical care are both ~~forms~~ <sup>forms</sup> of protected conduct for prisoners. Estelle v. Gamble, 429 U.S. 97, 103 (1976). Williamson asserted, in his original complaint, retaliation against defendants Ri.C.I. CWO Floyd and AWO Jordan for him (and other prisoners) filing grievances, and "making trouble" [i.e. legal trouble] (original complaint, pp. 46-50(a); Ex.F ; see, also, 6th Circuit slip opinion, id. p. 4, statements, as to Williamson's allegations on this subject); and for him mentioning "suing" Jordan (original complaint, pp. 28 ; see, also, 6th Circuit slip opinion (App. 1) statements p. 4, qs to Williamson's allegations on this subject). The 6th Circuit slip opinion, id., p. 4, also references that the district court opinion ~~publications~~ (slip opinion, App. 2) did not address Williamson's retaliation claims at all. The 6th Circuit slip opinion, id., pp. 4-5, makes no assertion that Williamson's conduct in filing pertinent grievances ~~was~~ ~~attempts~~ and attempting to obtain adequate medical care was not "protected conduct." What the 6th Circuit opinion does do, id., pp. 4-5, on the other hand, is meld the "adverse action" requirement for a retaliation claim under Thaddeus-X supra, into the physical injury reference of § ~~1983~~ 1997 e (e).



The 6th Circuit based its holding, *supra*, on a ~~well~~ <sup>formerly</sup> well established theory of the First Amendment that not requiring personal physical "injury" as an element of a § 1983 retaliation claim "would trivialize the First Amendment [if] harassment for exercising (First Amendment rights) was always actionable no matter how unlikely to deter a person of ordinary firmness from that exercise," citing Bart v. Telford, 677 F. 2d 622, 625 (7th Cir. 1982).

Williamson asserts, instead, contra, as do other legal authority proponents of the same view, that requiring a physical injury element for any First Amendment <sup>violation trivializes that amendment.</sup> It does not, moreover, make any logical or moral sense that Williamson's position, *supra*, would have applicability for First Amendment violation claims where retaliation of government actors is not in play, or where retaliation of government actors against prisoners is not in play, ~~and not have applicability~~ and not have applicability where retaliation of government actors is in play, or where retaliation of government actors against prisoners is in play.

In a case involving a claim of First Amendment violations for denial of access to the courts,<sup>1</sup> the 6th Circuit court of appeals first ruled, in 1986, that:

"... [G]eneral damages are presumed, to occur when First Amendment rights are violated." Parrish v. Johnson, 800 F. 3d 600, 606-07 (6th Cir. 1996).

In another prisoner access to the courts case, in limiting the actual physical injury requirement of the Prisoners' Litigation Reform Act, 42 U.S.C. § 1997 e (e), the 9th Circuit court of appeals held:

"The deprivation of First Amendment rights entitles a plaintiff to judicial relief wholly aside from any physical injuries he can show or any mental or emotional injury he may have incurred." Canell v. Lightner, 143 F. 3d 1210, 1213 (9th Cir. 1998). [Emphasis added].

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1. Denial to a prisoner of access to the courts by prison officials is a First Amendment violation claim. Preparing and filing certain types of suits is, also, protected conduct. ~~See~~ Lewis v. Casey, 518 U.S. 343 (1996).

In 2001, in another prisoner access to the courts case, the 8th Circuit court of appeals held that the actual harm required by § 1997e(e), supra, was provided in First Amendment violation claim cases by the action of the violation itself, i.e. that "cognizable harm arises ... ~~when~~ when the plaintiff's efforts to pursue [the First Amendment claim] are impeded."<sup>1</sup> Cody v. Weber, 256 F. 3d 764 (8th Cir. 2001).

The 6th Circuit, then, contrary to its decision on this subject in Williamson, supra, this brief, p. 3, in 2015, held, in another access to the courts claim case: ~~§ 1997e(e)~~

"The U.S. Court of Appeals for the 6th Circuit is [now] persuaded that deprivations of First Amendment rights are themselves injuries apart from any mental, emotional or physical injury that might also arise from the deprivation."  
[Emphasis added]. King v. Zamiatra, 783 F. 3d 207 (6th Cir. 2015), cert. den., Zamiatra v. King, 2016 U.S. LEXIS 189 (2016).

Zamiatra  
The holding in ~~§ 1997e(e)~~ v. King, supra, has since been followed in Aref v. Lynch, 2016 U.S. App. LEXIS 15230 (D.C. Cir. 2016).

There is no logical reason why the a different, negatively dispositive to him, standard was applied to the Petitioner by the 6th Circuit decision cited at this brief, p. 3, on the instant factual background.

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1. Actual quoted language from Sinkins v. Bruce, 406 F. 3d 1239 (10th Cir. 2005), at FN 10, citing to Lewis v. Casey, supra at 351, 353 & n. 4.

Conclusion

Because the cited holdings as to the requirements of actual physical injury in a First Amendment violation claim case have not been uniformly adopted by all the circuit courts, leading to the ~~disparate~~<sup>respect</sup> of disparate ~~disposi-~~ dispositions in such cases; because the cited holdings cannot and should not be applied to First Amendment violations involving denial of the right of access to the courts by prisoners, and not at the same time to retaliation claims in general, or to retaliation claims made by prisoners; and because of substantive conflict in U.S. constitutional law as to the meaning and importance of the First Amendment, and constitutional torts offensive to it, leading to conflicting and inconsistent application and results to similarly situated factually-based cases, this Court is respectfully requested by the Petitioner to grant certiorari in this case.

Respectfully submitted,

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